

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA, \*

PLAINTIFF, \*

V. \* CASE NO.2:06CR148-WHA

BENJANIN L. VANBUREN, \*

DEFENDANT. \*

**UNOPPOSED MOTION TO CONTINUE TRIAL**

Comes now the defendant, by and through undersigned counsel, and submits the following:

1. The trial of this case is set for the term beginning January 8, 2007.

2. The defendant is charged with conspiracy to possess with intent to distribute methamphetamine, possession with intent to distribute same and use/carry of a firearm during a drug trafficking offense.

3. Undersigned counsel and the government are in good faith negotiations to resolve this case without the necessity of a trial. There are some difficult issues that have arisen that remain unresolved and need to be resolved before a decision regarding a final resolution of this case can be made.

4. There is also pending a motion to suppress that counsel believes will substantially affect negotiations in

this case. The Motion to Suppress is set for hearing on November 16, 2006.

5. Undersigned counsel has a previously set evidentiary hearing in the Circuit Court of Montgomery County, Alabama that will conflict with the suppression hearing for the above styled case, which is the case of Flowers v. State, Case No. CC-97-20.60, set to begin at 9:00 a.m. on November 15, 2006 (order attached as Exhibit A). The Flowers case is a post conviction capital murder (death sentence) evidentiary hearing and is expected to last three days. There are out of state witnesses expected to testify with at least one coming from California, prison witnesses and expert witnesses. It has been difficult and expensive to arrange for the attendance of some witnesses for the Flowers case. Undersigned counsel is serving as appointed counsel in the Flowers case.

6. Undersigned counsel has filed a motion to continue the suppression hearing (see Doc. No. 72 attached as exhibit B), but it appears that if the suppression hearing is continued there would not be sufficient time for the Magistrate Judge to consider the evidence and issue a report and recommendation, nor would there be sufficient time for either the defendant or the Government to raise any objections to the report and recommendation prior to the January 8, 2007 trial date. It is in the best interest of the defendant that

sufficient time be given for him to pursue his motion to suppress and to continue his negotiations with the Government, and the Government will not be prejudiced by same. Therefore defendant requests that the trial term of January 8, 2007 be continue to the trial term of March 12, 2007.

7. Undersigned counsel has conferred with Assistant United States Attorney Terry Moorer regarding this request and the government does not oppose this motion for a continuance.

8. A waiver of speedy trial will be filed by defendant as soon as counsel receives it from the defendant. The defendant is currently detained in Gwinnett County, Georgia, and same will be returned by mail to counsel.

Wherefore, because of the above reasons undersigned counsel requests that the trial in the above styled case be reset to the March 12, 2007 trial term, or to some other term to be set by the Court.

Respectfully submitted this 8th day of November, 2006.

s/Jeffery C. Duffey  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of November, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Terry Moorner, AUSA, P.O. Box 197, Montgomery, AL 36101.

s /Jeffery C. Duffey  
JEFFERY C. DUFFEY  
Attorney for  
Defendant Van Buren